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# The Legal Framework of Foreign Investment in Egypt

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# The Legal Framework of Foreign Investment in Egypt

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*This article is an outline of Egyptian Law No. 43 mentioned in the preceding article. Mr. Nazer further details the provisions of the amended law which sets up a groundwork for a favorable investment climate.*

## I. INTRODUCTION

EGYPT IS PRESENTLY experiencing a variety of political and economic changes aimed at enhancing economic and social development by employing idle capacity and welcoming new investment opportunities from domestic and foreign sources.

The purpose of this article is to review certain aspects of Law No. 43 of 1974, as amended, which established the framework for Egyptian policy governing investments of Arab and Foreign Funds and the Free Zones.[1]

The article also seeks to evaluate the criteria adopted in selecting approved projects or activities, the potential effectiveness of free zones in achieving their objectives, tax exemptions granted to enterprises established in and outside the free zones, and monetary concessions.

Investment Law No. 43 of 1974, as amended, is currently regarded as one of the principal intruments of Egypt's economic policy. According to the explanatory note introducing the law, the primary goals are to (1) create areas of joint interest for the national economy and for Arab and foreign investors; (2) broaden the participation of domestic capital with Arab and foreign capital; (3) improve the climate to make it conducive to the movement of Arab capital; (4) establish financial centres in Egypt to meet the needs of the Arab region and to facilitate investment of Arab funds within the region; (5) offer adequate guarantees against noncommercial risks, as well as other incentives to

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* Egyptian Minister of State for Economic Cooperation

[1] Law No. 43 of 1974 Concerning the Investment of Arab and Foreign Funds and the Free Zones, as *amended by* Law No. 32 of 1977. Law No. 43 repeals the prior investment regime established by Law No. 65 of 1971, which had been issued by President Sadat on September 23, 1971, and published in the *Official Gazette* on September 30, 1971.

encourage investment and; (6) to remove administrative and procedural barriers that might limit the growth of investment.

The enactment of the 1974 law has met with favorable response since its announcement. It represents a radical change in the Egyptian attitude toward private investments from that which prevailed for two decades prior to its enactment.

According to the provisions of the 1974 law, tax exemptions and other concessions are granted to promote selected industries and sectors deemed to be important for the economic development of the country.[2] A clear distinction is made, however, between two separate regimes covering activities and projects established in the free zones and those established inside the country.[3]

## II. DEFINITION OF INVESTED CAPITAL

Under Law No. 43, invested capital can be defined in one of the following ways:

(1) Foreign exchange for the purchase of equity capital or as equity participation;[4]

(2) Raw materials, unused machinery and equipment, other goods required for construction or expansion of new projects and business purposes. Special permission from the Investment Authority would be needed to bring in old or used machinery;[5]

(3) Intangible assets such as patents and trademarks, duly registered in any of the countries that are members of international conventions;[6]

(4) Foreign exchange transferred for feasibility studies on new projects and to finance the cost of setting up a business venture, within limits agreed upon with the Authority;[7]

(5) Foreign exchange transferred through Egyptian banks to purchase land and develop property relating to the business venture approved by the Authority;[8]

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[2] *Id.* art. 3.

[3] *Id.*

[4] *Id.* art. 2(i).

[5] *Id.* art. 2(ii).

[6] *Id.* art. 2(iii).

[7] *Id.* art. 2(iv).

[8] *Id.* art. 2 (vii).

(6) Profits reinvested realized from the operation of a project already approved by the Authority which are added to the capital of the project or used for another project;[9] or
(7) Foreign exchange transferred for the purchase of Egyptian securities and stock on the Egyptian stock market.[10]

## INLAND INVESTMENT

### A. *Fields of Activity*

In considering investment proposals, the General Authority for Investment and Free Zones, the governmental body empowered to apply the investment legislation, is to give priority to those projects which generate exports, encourage tourism, or reduce the need to import basic commodities, as well as to projects which require technical expertise or make use of patents or trademarks of worldwide reputation.[11]

However, the Law No. 43 has specified the general fields of investment as follows:

(1) Industrialization, mining, energy, tourism, transportation and other related activities;[12]
(2) The reclamation and cultivation of barren land, as well as projects for the development of animal and water resources. Such projects will be developed under longterm leases not exceeding fifty years. A lease may be renewed for an additional fifty years on the proposal of the Authority and approval of the Council of Ministers;[13]
(3) The construction of office buildings and above average housing as well as projects of urban expansion. Housing projects may be undertaken only by Arab capital;[14]
(4) Construction activities in regions outside the agricultural area and existing cities;[15]
(5) Construction contracting in which Egyptian capital holds at least fifty percent;[16]

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[9] *Id.* art. 2(v).
[10] *Id.* art. 2(vi).
[11] *Arab Republic of Egypt,* LEGAL GUIDE TO INVESTMENT IN EGYPT 25, 28-29.
[12] *Supra* note 1, art. 3(i).
[13] *Id.* art. 3(ii).
[14] *Id.* art. 3(iii).
[15] *Id.* art. 3(vii).
[16] *Id.* art. 3(viii).

(6) Joint venture technical consultant activities;[17]
(7) Investment banks, investment companies, commercial banks, and reinsurance companies whose activities are limited to transactions in free foreign currencies;[18] or
(8) Banks engaged in local currency transactions provided they take the form of a joint venture in which Egyptian capital holds at least fifty-one percent.[19]

### B. *Treatment of Overseas Capital*

All investment dealings will be effected at the highest exchange rate prevailing and declared for foreign currency, i.e., the incentive rate. The Egyptian investment law offers approved projects and invested capital certain guarantees and privileges as inducements to enter the country. Generally speaking, they are of four basic types: (a) Privileges with respect to exchange control and repatriation of profits and capital;[20] (b) exemptions from taxation and customs duties;[21] (c) exemptions from certain labor laws;[22] and (d) guarantees against expropriation.[23]

#### 1. Exchange Control Facilities

Law No. 43 grants approved projects the right to maintain one or more foreign exchange accounts. These accounts will include all foreign exchange received from abroad in the form of capital loans, or proceeds of visible and invisible exports.[24] Such accounts may be used for the settlement of all project commitments in foreign currency abroad. No special authorization to use these accounts is required, but annual reports on the activity in the accounts must be submitted to the Authority.

#### 2. Repatriation of Profits

The general principles that govern the repatriation of profits set down in the law are as follows:

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[17] Id. art. 3(ix).
[18] *Id.* art. 3(v).
[19] *Id.* art. 3(vi).
[20] *Id.* art. 15, 16.
[21] *Id.* art. 16.
[22] *Id.* art. 10-12. *See also* Law No. 73 of 1973 (Egypt).
[23] *Id.* art. 7.
[24] *Id.* art. 14.

(1) A project whose visible and invisible exports cover all elements of foreign exchange requirements, is permitted to transfer its annual profits within the limits of the balance of the proceeds of the project's exports.[25]

(2) Projects that are bascially not export-oriented and that limit the country's need for imports shall be permitted to transfer in whole or in part their net profits within the limits approved by the Authority.[26]

(3) Housing projects whose rentals are payable in foreign currency are permitted to transfer their net revenues in full. Others whose rentals are payable in local currency may transfer up to eight percent per year of the amount of the invested capital.[27]

(4) Popular housing projects and housing in new cities are permitted to transfer net revenues up to fourteen percent of invested capital.[28]

3. Repatriation of Capital

(1) Capital may be repatriated after five years from the date of entry in five equal annual installments, to the extent of the project's credit balance in its foreign exchange account.[29]

(2) Funds may be repatriated with no regard given to the period that has elapsed since its importation, in cases where exceptional circumstances exist or where the project could not be executed for reasons not attributable to the investor.[30]

(3) Funds imported in kind are permitted to be re-exported in the same form as originally imported.[31]

(4) Invested capital may be repatriated in full in a single transaction where the original investor has sold his interest for free currency actually transferred to Egypt.[32]

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[25] *Id.*

[26] *Supra,* note 12, at 33.

[27] *Supra,* note 1, art. 22(iii).

[28] *Id.*

[29] *Id.* art. 21(i).

[30] *Id.* art. 21.

[31] *Id.* art. 21(ii).

[32] *Id.* art. 21(i).

(5) Shares offered in free foreign currency may be sold at the Egyptian Stock Exchange. Proceeds will be transferrable to the seller's account abroad.[33]

4. Tax Holidays

(1) Profits of the project are exempt from taxes on commercial and industrial profits for a period of five to eight years from the first fiscal year following the commencement of production.[34]
(2) Distributed profits are exempt from the tax on revenues from movable capital, the tax on commercial and industrial profits as well as the general income tax for a period of five to eight years. After the expiration of the tax exemption period, profits distributed shall be exempted from the general tax on income up to a maximum of five percent of the investor's share of the invested capital for the entire life of the project.[35]
(3) Reconstruction projects, establishment of new cities and land reclamation shall be exempt for a period of ten years, with an extension for an additional five years upon approval of the President and upon recommendation of the General Authority.[36]
(5) Salaries of aliens are exempt from the general tax on income.[37]
(6) Shares are exempt from the proportional stamp duty.[38]

5. Exemptions from Certain National Legislation

(1) Approved projects, even when carried out as a joint venture with a public company, are deemed to belong to the private sector and are exempt from restrictions imposed on public sector companies.[39]
(2) Approved projects are exempt from distributing a fixed proportion of profits to laborers. A percentage, however, of the net profits should be distributed in accordance with

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[33] *Id.* art. 21(iii).

[34] *Id.* art. 6. which confers the privileges and exemptions set forth in arts. 9, 14, 15, 16, 17 & 18.

[35] *Id.* art. 17.

[36] *Id.* art. 16.

[37] *Id.* art. 20.

[38] *Id.* art. 16.

[39] *Id.* art. 19.

the rules proposed by the company's Board of Directors and approved by its General Assembly.[40]

6. Guarantees Against Expropriation

In one important article the law provides for protection to the investor against non-commercial risks, including assurances against nationalization or confiscation except by judicial procedures.[42]

### C. *Settlement of Investment Disputes*

The new climate and procedures for the establishment of foreign investment insures that disputes will rarely arise. In cases where they do, settlement is provided by four possible methods:

(1) In the manner agreed upon with the investor.
(2) Within the framework of an agreement in force between Egypt and the investor's home country.
(3) Within the framework of the Convention of the Settlement of Investment Disputes Between the State and the Nationals of Other States to which Egypt has adhered since 1971.
(4) Arbitration (Full arbitration procedures exist should these become necessary).

## IV. FREE ZONES

Egypt is situated at the crossroads of three major continents thus offering easy access to many large and varied markets. Its prospects for accelerated progress have been enhanced recently by discoveries of petroleum deposits and by the availability of abundant electric power generated by the Aswan High Dam. The abundant supply of low cost and highly skilled labor makes Egypt's free zones attractive sites for the manufacture or assembly of goods for export. For this purpose free zone areas have been established in Cairo, Alexandria and Suez where the investor may rent a plot of land to establish his project. In addition, all of the city of Port Said was declared a free zone early in 1976.[42] An investor may also establish a private free zone area, if he finds this to be more convenient.

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[40] *Id.* art. 12.
[41] *Id.* art. 7.
[42] *Supra,* note 12, at 47.

Port Said and Suez area locations at the north and south ends of the Canal offer attractive opportunities for the development of free zones and related free port activities. The government has undertaken to construct the harbor facilities and to develop all necessary infrastructure for the establishment and successful operation of the zones.

Several engineering and architectural consulting firms have been selected to advise and assist the government in designing and planning the free zone sites.

A. *Four Types of Free Zone Activities*[43]

(1) Storage of transit goods destined for export, and foreign goods arriving in Egypt;

(2) Sorting, cleaning, mixing, blending, repacking and similar operations which adapt the condition of goods warehoused in the free zone to the requirements of trade;

(3) Manufacturing, assembling, mounting, processing, renewing or any other operations which need the advantage of a free zone to benefit from the country's geographical position;

(4) Pursuing any occupation warranted by the activities of or services needed by firms working within the zone.

B. *Two types of Free Zones*

(1) "Public Free Zone" established by the Authority and approved by the Council of Ministers,

(2) "Private Free Zone" which may be created for a single project by a resolution from the Authority.

C. *Privileges of Free Zone Investments*

(1) Projects are exempt from payment of customs duties and taxes on imported equipment and machinery necessary for the projects' operation.[44]

(2) Goods withdrawn from the free zone for domestic consumption whose local components account for at least forty percent or more of the manufactured product, will be subject to a reduction of fifty percent of the customs

[43] *Supra*, note 1, art. 35.

[44] *Id.* art. 36.

duties payable on the ad valorem values of foreign materials contained in the manufactured product.[45]

(3) Transactions with other countries are exempt from exchange control regulations.[46]

(4) The guarantee against nationalization of projects and against confiscation of assets, except through judicial procedure, is extended to the free zone projects.

(5) There is no obligation to provide in the projects' by-laws for alternative methods of worker participation in profits and management.

### D. *Some Financial Commitments*

A free zone project is liable to pay an annual duty up to one percent of the value of goods entering or leaving it. Projects with no commodities exported or imported are subject to an annual duty not exceeding three percent of the annual value added to the project.[47]

## V. INSTITUTIONAL FRAMEWORK[48]

Law No. 43 of 1974, as amended, has broadened the jurisdiction of the Authority to encompass local private sector investment in addition to foreign or joint venture investments. The preceding four years' experience has been remarkable in terms of shifting the Authority's emphasis from screening and control to promotion. Greater stress has been placed on services to the investor and facilitating the implementation of projects. The Authority's staff and physical facilities have been upgraded to reflect its new direction, and both the Board of Directors of the Authority and the Supreme Council for Investment (Chaired by the Prime Minister) are taking steps to reduce interministerial conflicts and delays.

Under current procedures, an investor is likely to receive a decision within as few as two months if he submits an adequately prepared proposal and feasibility study to the Authority. The Authority then makes an economic analysis of the proposal while requesting the appropriate Ministry to give a technical opinion. On the basis of these studies, the staff of the Authority prepares a recommendation for its Board of

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[45] *Id.* art. 37.

[46] *Id.* art. 36.

[47] *Id.* art. 46.

[48] *Salacuse, J. & Parnell, T.* FOREIGN INVESTMENT AND ECONOMIC OPENNESS IN EGYPT, THE INTERNATIONAL LAWYER, 1978.

Directors which meets monthly. Thereafter, the Authority informs the investor of the decision of the Board by letter, attaching thereto a copy of the Board resolution which, under the Law No. 43, has the effect of an administrative decision. The investor then has six months within which to begin implementing his project, subject to extension by decision of the Board.

## VI. CONCLUSION

The adoption of Law No. 43 of 1974 has led to the revision of a major portion of Egyptian legislation, at least as it related to business and commerce. But, law is merely one element in the creation of a favorable investment climate. The new Egyptian cabinet intends to spearhead an expanded drive to strengthen the private sector and make public sector companies more efficient. Top priority is now given to improving public utilities and services. After the implementation of the terms of the recent peace treaty, Egypt will probably experience the kind of massive infusion of western technology and Arab capital which the architects of the open-door policy had initially hoped would transform the country.